

IC 34-18-5

Chapter 5. Surcharge

IC 34-18-5-1

Annual surcharge on health care providers

Sec. 1. To create a source of money for the patient's compensation fund, an annual surcharge shall be levied on all health care providers in Indiana.

As added by P.L.1-1998, SEC.13.

IC 34-18-5-2

Amount of surcharge

Sec. 2. (a) As used in this section, "actuarial program" means a program used or created by the department to determine the actuarial risk posed to the patient compensation fund under IC 34-18-6 (or IC 27-12-6 before its repeal) by a hospital. The program must be:

- (1) developed to calculate actuarial risk posed by a hospital, taking into consideration risk management programs used by the hospital;
- (2) an efficient and accurate means of calculating a hospital's malpractice actuarial risk;
- (3) publicly identified by the department by July 1 of each year; and
- (4) made available to a hospital's malpractice insurance carrier for purposes of calculating the hospital's surcharge under subsection (g).

(b) Beginning July 1, 1999, the amount of the annual surcharge shall be one hundred percent (100%) of the cost to each health care provider for maintenance of financial responsibility. Beginning July 1, 2001, the annual surcharge shall be set by a rule adopted by the commissioner under IC 4-22-2.

(c) The amount of the surcharge shall be determined based upon actuarial principles and actuarial studies and must be adequate for the payment of claims and expenses from the patient's compensation fund.

(d) The surcharge for qualified providers other than:

- (1) physicians licensed under IC 25-22.5; and
- (2) hospitals licensed under IC 16-21;

may not exceed the actuarial risk posed to the patient's compensation fund under IC 34-18 (or IC 27-12 before its repeal) by qualified providers other than physicians licensed under IC 25-22.5 and hospitals licensed under IC 16-21.

(e) There is imposed a minimum annual surcharge of one hundred dollars (\$100).

(f) Notwithstanding subsections (b), (c), and (e), beginning July 1, 1999, the surcharge for a qualified provider who is licensed under IC 25-22.5 is calculated as follows:

- (1) The commissioner shall contract with an actuary that has experience in calculating the actuarial risks posed by physicians. Not later than July 1 of each year, the actuary shall

calculate the median of the premiums paid for malpractice liability policies to the three (3) malpractice insurance carriers in the state that have underwritten the most malpractice insurance policies for all physicians practicing in the same specialty class in Indiana during the previous twelve (12) month period. In calculating the median, the actuary shall consider the:

(A) manual rates of the three (3) leading malpractice insurance carriers in the state; and

(B) aggregate credits or debits to the manual rates given during the previous twelve (12) month period.

(2) After making the calculation described in subdivision (1), the actuary shall establish a uniform surcharge for all licensed physicians practicing in the same specialty class. This surcharge must be based on a percentage of the median calculated in subdivision (1) for all licensed physicians practicing in the same specialty class under rules adopted by the commissioner under IC 4-22-2. The surcharge:

(A) must be sufficient to cover; and

(B) may not exceed;

the actuarial risk posed to the patient compensation fund under IC 34-18-6 (or IC 27-12-6 before its repeal) by physicians practicing in the specialty class.

(g) Beginning July 1, 1999, the surcharge for a hospital licensed under IC 16-21 that establishes financial responsibility under IC 34-18-4 after June 30, 1999, is established by the department through the use of an actuarial program. At the time financial responsibility is established for the hospital, the hospital shall pay the surcharge amount established for the hospital under this section. The surcharge:

(1) must be sufficient to cover; and

(2) may not exceed;

the actuarial risk posed to the patient compensation fund under IC 34-18-6 by the hospital.

(h) An actuarial program used or developed under subsection (a) shall be treated as a public record under IC 5-14-3.

As added by P.L.1-1998, SEC.13. Amended by P.L.111-1998, SEC.7; P.L.233-1999, SEC.14.

IC 34-18-5-3

Collection of surcharge; time for payment

Sec. 3. (a) The surcharge shall be collected on the same basis as premiums by each insurer, risk manager, or surplus lines producer.

(b) The surcharge is due and payable within thirty (30) days after the premium for malpractice liability insurance has been received by the insurer, risk manager, or surplus lines producer from a health care provider in Indiana. If a surcharge is not paid as required by this section, the insurer, risk manager, or surplus lines producer responsible for the delinquency is liable for the surcharge plus a penalty equal to ten percent (10%) of the amount of the surcharge.

(c) If the annual premium surcharge is not paid within the time

limit specified in subsection (b), the certificate of authority of the insurer, risk manager, and surplus lines producer shall be suspended until the annual premium surcharge is paid.

As added by P.L.1-1998, SEC.13. Amended by P.L.178-2003, SEC.96.

IC 34-18-5-4

Adoption of rules; comparability of rates

Sec. 4. (a) The commissioner may adopt rules establishing the following:

(1) The manner of determination of the surcharge for a health care provider that establishes financial responsibility in a way other than by a policy of malpractice liability insurance.

(2) The manner of payment of the surcharge by such a health care provider.

(b) The surcharge calculation established under subsection (a) must provide comparability in rates for insured and self-insured hospitals. This surcharge may not exceed the surcharge that would be charged by the residual authority if the health care provider electing to establish financial responsibility in this manner had applied to the residual authority for insurance.

As added by P.L.1-1998, SEC.13.